In the High Court of Punjab and Haryana at Chandigarh.

C.R.No. 6284 of 2006
Date of decision:5.3.2007

Balkar Singh and others

Petitioners

Vs.

Kehar Singh and others

Respondents

Coram: Hon'ble Mr. Justice S.N.Aggarwal

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Present: Mr.R.S.Tacoria, Advocate,
for the petitioners.

Mr. B.R.Mahajan, Advocate,
for respondent No. 1.

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S.N.Aggarwal, J.(Oral)

Submits that the petitioners had filed a civil suit for permanent injunction against the respondents seeking to restrain them from raising the construction or altering the nature of the suit property during the pendency of the civil suit. It was pleaded in the civil suit that property was joint between the parties. The petitioner had also filed an application for partition of the suit proceedings. Respondents No. 2 to 5 appeared in the learned trial Court and gave an undertaking that they would not raise any construction over the suit property. However, the respondents took the plea that construction has already been raised up to the roof level. The learned trial court accepted the application for interim stay and restrained respondent No. 1 from raising the construction. Respondent no. 1 filed an

appeal against the stay order. The learned Lower Appellate Court vide order dated 21.11.2006 permitted respondent No. 1 to carry out the plastering work of the walls fixing wooden doors/windows, otherwise respondent No. 1 would suffer irreparable loss. Order dated 21.11.2006 has been challenged by the petitioners-plaintiff by filing the present revision petition.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court reported as **Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass** 2005(1) Civill Court Cases 430 (S.C.) and submitted that the respondent cannot be permitted to change the nature of the suit property during the pendency of the civil suit. Further submits that construction has been raised by respondent No. 1 during the pendency of the civil suit.

This submission was rebutted by the counsel for respondent No. 1. It was submitted that respondent No. 1 has constructed the house in an area measuring 8 marlas only while actual 19 kanals of the land comes to the share of respondent No. 1, being his share and and his sister's share. Further submits that he would not raise any contruction during the pendency of the civil suit on any other area. Further submits that roof has already been laid down and he only wants to complete the construction i.e. plastering of walls and fixing wooden doors and flooring within the house. Further submits that he has started construction in January, 2006 but the suit was filed against him by the petitioners on 31.5.2006. He had appeared before the learned trial court and filed an application for appointment of the Local Commissioner to prove that construction was already completed up to the lintel level.

Perusal of the facts, therefore,prima facie reveals that the construction up to the lintel level was already complete when the petitioner has filed the civil suit and the nature of the suit land was already changed by him by raising the building under reference.

Judgment relied upon by the learned counsel for the petitioner does not apply to the facts of the present case as respondent No. 1 has given an undertaking that he would not raise any construction on any other portion of the property in his possession till the decision of the partition proceedings or the decision of the civil suit for permanent injunction. If respondent No. 1 is now restrained from completing the building that will cause serious prejudice to his case. Therefore, there is no infirmity in the order passed by the learned Learned Lower Appellate Court.

No merits.

Dismissed.

(S.N.AGGARWAL)
JUDGE

5.3.2007
paramjit